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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XR050

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys along the Oregon and California Coasts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the University of California Santa Cruz for authorization to take small numbers of marine mammals incidental to rocky intertidal monitoring along the coasts of Oregon and California over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the University of California Santa Cruz's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the University of California Santa Cruz's application and request.

DATES: Comments and information must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries

Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Meadows@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Dr. Dwayne Meadows, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the University of California Santa Cruz's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are

made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On August 12, 2019, NMFS received an application from the University of California Santa Cruz requesting authorization for take of marine mammals incidental to research activities related to rocky intertidal monitoring along the coasts of Oregon and California. After the applicant responded to our questions, we determined the application was adequate and complete

on October 8, 2019. The requested regulations would be valid for five years, from 2020 through 2025. The University of California Santa Cruz plans to conduct necessary work, including research surveys, to monitor rocky intertidal communities. The proposed action may incidentally expose marine mammals occurring in the vicinity to researchers moving through their habitat, and setting up research transects and photoquadrats, thereby resulting in incidental take, by Level B harassment only. Therefore, the University of California Santa Cruz requests authorization to incidentally take marine mammals.

Specified Activities

The Partnership for Interdisciplinary Studies of Coastal Oceans (PISCO, www.piscoweb.org), administered by the University of California Santa Cruz, conducts monitoring at rocky intertidal sites in California and Oregon. They have been conducting similar research since 2013. Information from PISCO's research is used to inform marine policy and is also made available to the public through outreach and educational programs. The University of California Santa Cruz anticipates approximately 300 survey days over the course of the 5-year period. They expect to take California sea lions, Northern elephant seals, Steller sea lions, and California and Oregon/Washington stocks of harbor seals.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the University of California Santa Cruz's request (see **ADDRESSES**). NMFS will consider all

information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by University of California Santa Cruz, if appropriate.

Dated: October 11, 2019.

Donna Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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